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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re A.S., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.T.,

Defendant and Appellant.

A146847

(Alameda County
Super. Ct. No. OJ15025076)

A.S. (minor), the daughter of appellant A.T. (Mother), was detained in part on the allegation she had been physically abused by Mother, an allegation Mother disputed. At the time scheduled for the contested jurisdictional and dispositional hearing, Mother failed to appear, telling her attorney she had to attend a funeral. The juvenile court granted a continuance, but it told counsel the continuance would be honored only if, on the continued date, Mother supplied documentary evidence she had indeed been attending a funeral. When Mother failed to bring the required evidence to the continued hearing, the juvenile court purported to deny the continuance. It then found true the jurisdictional allegations and made dispositional findings without hearing Mother's testimony.

Mother contends the juvenile court's denial of a contested hearing denied her due process. We agree. We vacate the juvenile court's jurisdictional and dispositional findings with respect to Mother and remand for further proceedings.

I. BACKGROUND

In June 2015, the Alameda County Social Services Agency (Agency) filed a dependency petition in connection with the minor, Mother's four-year-old daughter. The petition alleged Mother had hit the minor in the eye, causing a bruise, and suffered from a "substance abuse issue" that interfered with the minor's care and supervision. (Welf. & Inst. Code,¹ § 300, subds. (a), (b).) The petition also alleged the minor's presumed father (Father) had failed to protect the minor and provide to her safe and suitable housing. (§ 300, subds. (b), (g).) During an interview recounted in the detention report, Mother had acknowledged hitting the minor and using cocaine once or twice a month, as well as requiring methadone. Mother conceded she "needed support to address the issues which warranted the [Agency] investigation." A neighbor contacted by the Agency confirmed both Mother's mistreatment of the minor and her apparent use of narcotics. The juvenile court detained the minor and scheduled a jurisdictional and dispositional hearing for July. The hearing was later rescheduled for September when Mother indicated she would contest the petition.

In the weeks following the minor's detention, Mother recanted her acknowledgment of child abuse, contending the minor's eye had been injured in a fall and claiming she had only admitted spanking her. The minor backed up Mother's explanation. Mother acknowledged, however, that her use of cocaine had increased since the minor's detention and told the Agency she was amenable to participating in a drug treatment program, but she had yet to begin treatment. Regardless of the allegation of physical abuse, there was copious evidence of Mother's harsh treatment of the minor, and Mother admitted she might benefit from anger management therapy.

When the parties appeared for the hearing in September, Mother was not present. Her attorney requested a continuance, explaining Mother had called her late the prior day and said she could not attend because she "had a death in the family." The court continued the hearing, but only on the condition that Mother bring documentary evidence

¹ All statutory references are to the Welfare and Institutions Code.

to the continued hearing confirming that, in fact, she had attended a funeral. As the court explained, “If there’s some documentation that she attended a funeral today, then we’ll put it over for a hearing. If not, I’m not granting her a continuance for a hearing. We’ll just be going forward on what the recommendations are from The Agency.”² The continued hearing was set for October.

Mother appeared for the continued hearing, but she did not bring any documentary evidence of her attendance at a funeral at the time of the earlier hearing. Notwithstanding Mother’s failure to satisfy the court’s condition, her counsel confirmed that Mother disputed the allegations of physical abuse and was prepared to proceed with the hearing. The court then adjourned the proceedings briefly to permit Mother to locate documentation. When the parties returned, Mother asked for an adjournment until 5:00 p.m., when, she explained, she would be able to contact her mother for assistance. After further discussion, the court declined to delay the proceedings and told Mother it intended to adopt the recommended findings from the Agency’s report. As the court explained, “Obviously we can’t be here much after 5:00 p.m., and I’m not going to put it over for another date because I do think it’s in the best interest of [the minor] that this case have a disposition. At some point we need to move forward.”

Notwithstanding the court’s refusal to hold a contested hearing, the Agency agreed, upon the request of Mother’s counsel, to adopt certain changes to the text of the jurisdictional allegations. Following adoption of these changes, however, Mother’s counsel clarified “there are still a couple of statements that they were unwilling to agree. And normally we would like to have a hearing on those. . . . [J]ust for the record— [¶] . . . [¶] —we are not in agreement with the allegations as they stand.” Father, in contrast, did not dispute the jurisdictional allegations against him. Without taking any further evidence, the court found true the amended allegations of the petition against each of the

² The juvenile court had reason to doubt Mother’s claim. As far back as June, Mother used her distress from “a recent loss in her family” as an excuse for postponing drug abuse treatment.

parents, declared the minor a dependent of the court, and made the dispositional findings necessary to justify removing the minor from the parents' custody.

II. DISCUSSION

Mother contends she was denied due process by the juvenile court's affirmation of the jurisdictional allegations and adoption of dispositional findings without allowing her to testify.

"Parents have a fundamental liberty interest in the care, custody, and management of their children. [Citation.] The state and federal Constitutions guarantee no state shall deprive parents of this interest in their children without due process of law, which includes the right to confront and cross-examine witnesses in dependency proceedings." (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 777.) Notwithstanding a court's power to control its calendar, decisions have long held that a parent's failure to appear at a scheduled hearing does not justify depriving the parent of his or her due process rights. (*In re Dolly D.* (1995) 41 Cal.App.4th 440, 446.) Although the juvenile court characterized its action as the retroactive denial of a continuance, its refusal to hear Mother's testimony constituted, in substance, a sanction for Mother's failure to justify her absence from the prior hearing. Because this improper sanction prejudicially denied Mother's due process rights, the court's ruling cannot be upheld.

As Mother argues, these circumstances are controlled by *In re Vanessa M.* (2006) 138 Cal.App.4th 1121 (*Vanessa M.*), which dictates a reversal of the juvenile court's order. In that case, the minor's father was alleged to have sexually abused her on the basis of reports from other family members. (*Id.* at pp. 1124–1125.) During the course of an extended jurisdictional/dispositional hearing, which stretched over several court sessions, the father was occasionally late and even failed to appear at all. Eventually, after the father was late for a session, the juvenile court, finding his proffered excuse inadequate, precluded him from testifying and found true certain jurisdictional allegations. (*Id.* at pp. 1125–1128.)

In considering the validity of this evidentiary sanction, the *Vanessa M.* court noted "[i]mpairment of the fundamental right to parent must comport with the requirements of

procedural due process.” (*Vanessa M.*, *supra*, 138 Cal.App.4th at p. 1129.) In the context of a jurisdictional and dispositional hearing, parents have the due process rights “to present oral testimony as well as to confront and cross-examine the witnesses against them.” (*Id.* at p. 1130.) While *Vanessa M.* recognized the “[f]ather is certainly not the most attractive standard bearer for the right to be heard” as a result of his inconsistent record of attendance, it held the juvenile court could not deprive the father of these procedural due process rights “simply because the parent failed to appear.” (*Ibid.*) The court found the type of evidentiary sanction imposed by the juvenile court was not authorized by any statute or rule of court. Further, while the agency attempted to justify the sanction under rules governing contempt of court, the court noted no contempt had been found, and, in any event, there was no authority to support the imposition of a procedural default as a sanction for contempt. (*Id.* at p. 1131.)

Recognizing the frustration of a juvenile court in dealing with an uncooperative parent, the *Vanessa M.* court explained the court is not “powerless to deal with failures to appear. When a parent is absent without good cause at a properly noticed hearing, the court is entitled to proceed in the parent’s absence. [Citation.] A parent’s failure to appear will not normally constitute the good cause necessary to justify a continuance [citation], because substantial importance is attached to ‘the child’s need for a prompt resolution of the matter’ [citation]. An unjustified failure to appear at a duly noticed hearing reflects a parent’s choice not to attend. [Citation.] A court may properly treat this choice as a waiver of the right to be present *at that hearing* and of the benefits of being present.” (*Vanessa M.*, *supra*, 138 Cal.App.4th at pp. 1131–1132.)

The court applied the “harmless beyond a reasonable doubt” standard of *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*), to conclude the juvenile court’s evidentiary sanction required reversal of the jurisdictional findings. Noting the dispute at the hearing about various critical allegations, the court held, “had it not been for the violation of Father’s due process right to be heard, there was a reasonable possibility that his testimony would have undermined support for the court’s findings.” (*Vanessa M.*, *supra*, 138 Cal.App.4th at p. 1133.)

Although couched as a ruling on Mother's request for a continuance, the juvenile court's refusal to permit Mother to testify was indistinguishable in substance from the evidentiary sanction found improper in *Vanessa M.* Mother appeared at the continued hearing and was prepared to testify, but the juvenile court refused to hear her testimony. The basis for the refusal was precisely the same as the basis for the evidentiary sanction imposed in *Vanessa M.*: Mother's failure to provide an excuse acceptable to the court for her failure to appear for a hearing. Indeed, the refusal was based not so much on Mother's failure to provide an acceptable explanation—attendance at the funeral of a close family member could certainly constitute “good cause” for the grant of a continuance—but her failure to provide documentary proof in support of this explanation. Under *Vanessa M.*, this failure was an insufficient basis to deprive Mother of her due process right to present testimony regarding the Agency's allegations.

The Agency contends the juvenile court's actions can be justified as a denial of Mother's request for a continuance under section 352, on the ground she failed to demonstrate good cause for the continuance. Perhaps the juvenile court could have denied Mother's request for a continuance at the time it was made, but we cannot accept the characterization of the court's conduct at the continued hearing as the denial of a continuance. The Agency points us to no statute or rule authorizing a trial court to grant a continuance “conditionally”—that is, to grant the continuance while reserving the power to deny it retroactively at a later time. Further, as a practical matter, the juvenile court did not deny Mother's request for a continuance; it granted it. When Mother's attorney appeared at the September hearing and requested a continuance, the juvenile court ceased further proceedings on that day and scheduled a new hearing for October. When the parties appeared in October, the court resumed proceedings. That is what happens when a continuance is granted.

When Mother appeared at the continued hearing, she was prepared to testify, and the juvenile court had set aside time in its schedule to hear that testimony. Yet the juvenile court refused to hear Mother's testimony because Mother failed to provide proof of her earlier funeral attendance. In other words, what the court denied Mother was not a

continuance of the hearing but the opportunity to testify at a continued hearing. In substance, that is the same type of evidentiary sanction imposed in *Vanessa M.* Labeling it the retroactive denial of a continuance does not change its essential character.

Further, we find the improper sanction to have been prejudicial under the *Chapman* standard. The Agency alleged both that Mother had abused the minor and that Mother's substance abuse impaired her ability to care for the minor. While there was certainly evidence of physical abuse in the Agency's reports, Mother disputed the allegations, and the minor's statements confirmed her denial. Under these circumstances, we cannot say, beyond a reasonable doubt, that Mother's explanation would not be found credible. Similarly, while there was evidence in the Agency reports of Mother's substance abuse, that evidence did not demonstrate beyond a reasonable doubt that Mother's use of illegal drugs had rendered her unable to care for the minor. While still caring for the minor, Mother was taking methadone to control narcotic cravings and admitted to only very occasional use of cocaine. For that reason, we cannot say beyond a reasonable doubt, based solely on the information in the Agency's reports, that Mother's substance abuse made her incapable of caring for the minor. The evidence supporting the dispositional findings was similarly equivocal. For these reasons, the jurisdictional and dispositional findings must be vacated as rendered in violation of Mother's due process rights.

Our conclusion does not require dismissal of the dependency proceeding. The general rule is that "the juvenile court takes jurisdiction over children, not parents. [Citations.] . . . [¶] As a result of this focus on the child, it is necessary only for the court to find one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) Given Father's decision not to contest the allegations against him, the court's affirmation of those allegations established jurisdiction to proceed with respect to the minor. However, if the juvenile court is to involve Mother in the proceedings—that

is, to take the minor from Mother's custody and require Mother to participate in a reunification plan in order to regain custody—appropriate jurisdictional and dispositional findings must be made with respect to her. Those can only be made, if at all, after a proper evidentiary hearing, consistent with due process and the dependency statutes.

III. DISPOSITION

The portion of the juvenile court's minute order of October 14, 2015 finding true the jurisdictional allegations against Mother and making dispositional findings with respect to Mother is vacated. The matter is remanded to the juvenile court for it to conduct a jurisdictional/dispositional hearing with respect to Mother. In the event jurisdictional allegations against Mother have not been found true and appropriate dispositional findings have not been made with respect to Mother within 60 days from the date of remittitur, the minor shall be returned to Mother's custody and the proceeding against her terminated.

Margulies, J.

We concur:

Humes, P.J.

Banke, J.

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In re A.S.